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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Caesar, Rivise, Bernstein, Cohen & Pokotilow Ltd. 11th Floor, Seven Penn Center Philadelphia, PA 19103			EXAMINER PARK, JEONG S	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 01/21/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/763,135

Applicant(s)

DAN ET AL.

Examiner

Jeong S. Park

Art Unit

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35, 36, 38-42, 44-52, 54 and 58-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35, 38, 39, 42, 44-52, 54 and 58-63 is/are rejected.
- 7) ☒ Claim(s) 36, 40 and 41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to Application No. 10/763,135 filed on 22 January 2004. The amendment presented on 11/3/2010 is hereby acknowledged. Claims 35, 36, 38-42, 44-52, 54 and 58-63 have been examined.

Response to Arguments

2. Applicant's arguments filed 11/3/2010 have been fully considered but they are not persuasive.

A. **Summary of Applicant's Arguments**

In the remarks, the applicant argues as follows:

Regarding amended claims 61-63, Chen does not teach allocating a sever node in accordance with a monetary penalty amount for failure to meet a requirement of a service level agreement.

B. **Response to Arguments:**

In response to argument, Barsness teaches as follows;

A monetary value associated with the request (determining a price to be charged for performing the request based on the amount of time, see, e.g., col. 2, lines 36-39).

Chen teaches as follows:

The quality of service depends on the terms of a service level agreement between the user and the service domain, processed by the controller into a set of

policies to be applied. The policies include dynamic selection and **allocation of the network resources** so as to transmit the data stream **with the expected quality of service** (see, e.g., abstract);

The SLA's allows operations staff to prioritize diagnosis and problem resolution issues, such as **re-allocating the QoS resources based on the penalties** associated with the problems (equivalent to applicant's penalty for a failure to meet a requirement of the SLA), see, e.g., paragraph [0017]); and

Monetary penalty is specified in the SLA (QoS control and resource management in each network domain is performed by applying Policy-based QoS resource control and management where the policies are derived from SLA's to reflect the constraints over the selection, allocation and performance of the network bearers, the **corresponding cost** and even the associated **penalties** that are defined in the Intra-domain SLA's, see, e.g., paragraph [0035]).

The examiner interpreted the monetary penalty as **penalty relating to money**.

Therefore, the corresponding cost associated penalties in SLA taught by Chen is equivalent to penalty relating to money. One of ordinary skill in the art at the time of the invention would have known any network cost is associated with a kind of monetary value. Barsness also teaches of determining a price (equivalent to applicant's monetary value) based on the amount of time requested, wherein the amount of time same as the network cost is considered as a monetary value.

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein in view of Barsness with Chen to include the penalty as

monetary value in the SLA in order to economically allocate resource based on the penalties associated with the problems.

Allowable Subject Matter

3. Claims 36, 40, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 35, 38, 39, 42, 44-48, 54 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fellenstein et al. (hereinafter Fellenstein)(U.S. Patent No. 7,406,691 B2) in view of Barsness et al. (hereinafter Barsness)(U.S. Patent No. 7,379,884 B2), and further in view of Chen et al. (hereinafter Chen)(U.S. Pub. No. 2003/0009580).

Regarding claim 63, Fellenstein teaches as follows:

A method for supporting an application workload (job request from client system 200 in figure 2) using a resource at a remote location (virtual resource 160 in figure 2)(allocating additional resources to a job submitted to a first selection of resources in a

grid environment, see, e.g., col. 3, lines 25-36), the method comprising:

assigning a subset of a plurality of server nodes to execute the application workload (grid management system controls distribution of each job to a selection computing systems of virtual resource, see, e.g., col. 7, lines 23-27);

executing the application workload on the assigned subset of the plurality of server nodes (virtual resource handles the request and returns the result, see, e.g., col. 7, lines 28-31);

monitoring execution of the application workload to determine whether a threshold of a performance requirement is met (not meeting performance requirements for a job from client system, then additional resources may be allocated including other resources from external grids, see, e.g., col. 10, lines 1-9);

responsive to a determination that the threshold of the performance requirement is not being met sending a request for at least one server node at the remote location (if not meeting the performance requirement, then additional resources may be allocated including other resources from external grids, see, e.g., col. 10, lines 1-9);

receiving from the remote location an acceptance of the request (a grid resource (applicant's remote location resource) is added at 740 in figure 7B, see, e.g., col. 13, lines 7-23) in accordance with the monetary value (decision controller 614 in figure 6 determines resource options to meet performance specification designated for the job request, see, e.g., col. 10, lines 60-67); and

allocating the at least one server node in accordance with performance specifications included in the service level objects and agreements (if the resources

handling a job do not meet performance specifications, then additional resources may be allocated to the virtual organization of resources formed to process the job. These performance specifications may include quality of service specifications compiled from service level objects and agreements, see, e.g., col. 10, lines 29-43).

Fellenstein does not teach of specifying a number of nodes requested, a time duration for which the requested nodes are needed, and a monetary value associated with the request.

Barsness teaches as follows;

A number of nodes requested (estimates the resources that are needed to complete the request within the required completion time, see, e.g., col. 9, lines 1-5);

a time duration requested (required completion time for the request in the customer's service contract, see, e.g., col. 7, lines 9-13); and

a monetary value associated with the request (determining a price to be charged for performing the request based on the amount of time, see, e.g., col. 2, lines 36-39).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein with Barsness in order to efficiently assign available resources in the grid environment based on the requested job characteristics.

Fellenstein in view of Barsness do not teach of allocating resources in accordance with the monetary penalty amount specified by a service level agreement.

Chen teaches as follows:

The quality of service depends on the terms of a service level agreement between the user and the service domain, processed by the controller into a set of

policies to be applied. The policies include dynamic selection and allocation of the network resources so as to transmit the data stream with the expected quality of service (see, e.g., abstract);

allocating resources based on the penalties and monitoring pre-defined server requirements (SLA's facilitate a close association between the pre-defined service requirements and constraints on the performance of the networks and thus facilitate monitoring and reporting of the operational status of the network in terms of QoS control and service provisioning. The SLA's allows operations staff to prioritize diagnosis and problem resolution issues, such as re-allocating the QoS resources based on the penalties associated with the problems (equivalent to applicant's penalty for a failure to meet a requirement of the SLA), see, e.g., paragraph [0017]); and

monetary penalty is specified in the SLA (QoS control and resource management in each network domain is performed by applying Policy-based QoS resource control and management where the policies are derived from SLA's to reflect the constraints over the selection, allocation and performance of the network bearers, the corresponding cost and even the associated penalties that are defined in the Intra-domain SLA's, see, e.g., paragraph [0035]).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein in view of Barsness with Chen to include penalty cost in the SLA in order to economically allocate resource based on the penalties associated with the problems.

Regarding claim 35, Fellenstein teaches as follows:

A first application workload executes on a first server cluster (GM 504 in figure 5) having a first domain (local grid) and the remote location (GM510 or GM 520 in figure 5) includes a second domain (grid A or grid B in figure 5) having a second server cluster running a second application workload further comprising:

monitoring execution of the first application workload to determine whether the performance requirements for execution of the first application workload specified in the service level agreement will continue to be met (not meeting performance requirements for a job from client system, then additional resources may be allocated including other resources from external grids, see, e.g., col. 10, lines 1-9); and

responsive to a determination that the performance requirements for execution of the first application workload will not continue to be met, sending a request to the second domain to assign one or more of the plurality of server nodes in the second server cluster at the second domain to the execution of the first application workload (if not meeting the performance requirement, then additional resources may be allocated including other resources from external grids, see, e.g., col. 10, lines 1-9).

Regarding claims 38 and 42, Chen teach as follows:

SLA negotiation and assignment, wherein after validating the service availability, the SLA server creates and accepts the SLA creation request (see, e.g., paragraph [0077]-[0081]).

It would have been obvious for one of ordinary skill in the art at the time of the invention to include denying the SLA request when the validation fails based on the service availability.

Therefore, they are rejected for similar reason as presented above per claim 63.

Regarding claim 39, it is rejected for same reason as presented above per claim 63.

Regarding claim 44, Barsness teaches as follows:

The monetary value associated with the request is a payment amount for the number of server nodes requested (determining a price to be charged for performing the request based on the amount of time, see, e.g., col. 2, lines 36-39).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein in view of Reedy with Barsness in order to efficiently assign available resources in the grid environment based on the requested job characteristics.

Regarding claims 45-48, Fellenstein teaches multiple computer systems managed to provide resources (see, e.g., col. 4, line 65 to col. 5, line 51 and 100 in figure 1), which are capable of running any applications including stock trades as a transaction application and optimization of a stock portfolio as a parallel application.

Regarding claim 54, Fellenstein teaches as follows:

Monitoring one or more of a transaction rate, a transaction response time, availability of a server node, and utilization of a server node (the resource monitor execute performance check that surveys the performance of available resources, see, e.g., col. 11, lines 58-67).

Regarding claims 61 and 62, they are rejected for similar reason as presented above in claim 63.

6. Claims 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fellenstein et al. (hereinafter Fellenstein)(U.S. Patent No. 7,406,691 B2) in view of Barsness et al. (hereinafter Barsness)(U.S. Patent No. 7,379,884 B2) and Chen et al. (hereinafter Chen)(U.S. Pub. No. 2003/0009580), and further in view of Elleson et al. (hereinafter Elleson)(U.S. Patent No. 6,459,682).

Regarding claims 49-52, Fellenstein teaches as follows:

Performance specification (equivalent to applicant's performance requirement) including quality of service specifications compiled from service level objects and agreements (see, e.g., col. 10, lines 38-43); and

a grid environment provides resources with a particular level of service including response time, throughput, availability, security, and the co-allocation of multiple resource types to meet complex user demands, see, e.g., col. 2, lines 31-38).

Fellenstein in view of Barsness and Chen does not teach of specifying SLA including throughput, response time, availability, downtime and penalty function.

Elleson teaches the well known SLA including the claimed limitations (see, e.g., col. 1, lines 37-55).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein in view of Barsness and Chen with Elleson in order to efficiently monitor the performance of a network as measured against multiple SLA agreements.

7. Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fellenstein et al. (hereinafter Fellenstein)(U.S. Patent No. 7,406,691 B2) in view of Barsness et al. (hereinafter Barsness)(U.S. Patent No. 7,379,884 B2) and Chen et al. (hereinafter Chen)(U.S. Pub. No. 2003/0009580), and further in view of Patel et al. (hereinafter Patel)(U.S. Patent No. 7,043,225).

Regarding claim 58-60, Fellenstein teaches of receiving from the remote location an acceptance of the request (a grid resource (applicant's remote location resource) is added at 740 in figure 7B, see, e.g., col. 13, lines 7-23) in accordance with the monetary value (decision controller 614 in figure 6 determines resource options to meet performance specification designated for the job request, see, e.g., col. 10, lines 60-67).

Barsness teaches of a monetary value associated with the request (determining a price to be charged for performing the request based on the amount of time, see, e.g., col. 2, lines 36-39).

Chen teaches of allocating resources based on the penalties and monitoring pre-defined server (see, e.g., paragraph [0017]).

Fellenstein in view of Barsness and Chen does not teach of determining minimum acceptable payment amount.

Patel teaches as follows:

Receiving the acceptance in accordance with a comparison of the monetary value and a minimum acceptable payment amount (the resource manager determines pricing from the pricing manager and the resource manager generates response based on the pricing information, see, e.g., col. 11, lines 33-48);

wherein the minimum acceptable payment amount (interpreted as the price offered from the resource manager) is determined in accordance with a determination of the value of processing operations performed at the remote location (the offered price from the resource manager is for the specified level of wireless resources, see, e.g., col. 8, lines 48-56); and

the value of processing operations performed at the remote location is determined in accordance with a service level agreement of the remote location (the SLA includes price parameters and service type parameters. The service type parameters include different class or quality of service (QoS) types such as gold, silver, bronze, premium, assured, and best efforts, see, e.g., col. 6, lines 22-42).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Fellenstein in view of Barsness and Chen with Patel in order to efficiently monitor the performance of a network as measured against multiple SLA agreements.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeong S. Park whose telephone number is (571)270-1597. The examiner can normally be reached on Monday through Friday 9:00 - 5:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph E. Avellino can be reached on 571-272-3905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J. S. P./
Examiner, Art Unit 2454

January 11, 2011

/Joseph E. Avellino/
Supervisory Patent Examiner, Art Unit 2454